ORIGINAL

Supreme Court, U.S.
FILED
JAN 19 2001
CLERK

No. 00-1002

In the

Supreme Court of the United States

STATE OF ALABAMA,

Petitioner,

v.

ULYSSES CHARLES SNEED,

Respondent.

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The respondent asks leave to file the attached brief in opposition without prepayment of costs and to proceed *in forma pauperis*.

Respondent has previously been granted leave to proceed *in forma pauperis* in the following courts: Circuit Court of Morgan County, Alabama; Court of Criminal Appeals of Alabama; Supreme Court of Alabama.

Respondent's affidavit or declaration in support of this motion is attached hereto.

Ulysses C. Sneed
Ulysses Charles Sneed

AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, Ulysses Sneed, am the Respondent in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	**Average monthly amount during the past 12 months**		**Amount expected next month**	
	You	Spouse	You	Spouse
Employment	$ 0	$ N/A	$ 0	$ N/A
Self-employment	$ 0	$ N/A	$ 0	$ N/A
Income from real property (such as rental income)	$ 0	$ N/A	$ 0	$ N/A
Interest and dividends	$ 0	$ N/A	$ 0	$ N/A
Gifts	$ 0	$ N/A	$ 0	$ N/A
Alimony	$ 0	$ N/A	$ 0	$ N/A
Child Support	$ 0	$ N/A	$ 0	$ N/A
Retirement (such as social security, pensions, annuities, insurance)	$ 0	$ N/A	$ 0	$ N/A
Disability (such as social security, insurance payments)	$ 0	$ N/A	$ 0	$ N/A
Unemployment payments	$ 0	$ N/A	$ 0	$ N/A
Public-assistance (such as welfare)	$ 0	$ N/A	$ 0	$ N/A
Other (specify): _____	$	$	$	$
Total monthly income:	$ 0	$ N/A	$ 0	$ N/A

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
none			$
			$
			$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A			$
			$
			$

4. How much cash do you and your spouse have? $ 0

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
		$	$
		$	$
		$	$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value _____

☐ Other real estate
Value _____

☐ Motor Vehicle #1
Year, make & model _____
Value _____

☐ Motor Vehicle #2
Year, make & model _____
Value _____

☐ Other assets
Description _____
Value _____

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
_____	$_____	$_____
_____	$_____	$_____
_____	$_____	$_____

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home) Are real estate taxes included? ☐ Yes ☐ No Is property insurance included? ☐ Yes ☐ No	$ 0	$ N/A
Utilities (electricity, heating fuel, water, sewer, and telephone)	$ 0	$ N/A
Home maintenance (repairs and upkeep)	$ 0	$ N/A
Food	$ 0	$ N/A
Clothing	$ 0	$ N/A
Laundry and dry-cleaning	$ 0	$ N/A
Medical and dental expenses	$ 0	$ N/A

	You	Your spouse
Transportation (not including motor vehicle payments)	$ 0	$ N/A
Recreation, entertainment, newspapers, magazines, etc.	$ 0	$ N/A
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	$ 0	$ N/A
Life	$ 0	$ N/A
Health	$ 0	$ N/A
Motor Vehicle	$ 0	$ N/A
Other: _____	$	$
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	$ 0	$ N/A
Installment payments		
Motor Vehicle	$ 0	$ N/A
Credit card(s)	$ 0	$ N/A
Department store(s)	$ 0	$ N/A
Other: _____	$	$
Alimony, maintenance, and support paid to others	$ 0	$ N/A
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$ 0	$ N/A
Other (specify): _____	$	$
Total monthly expenses:	$ 0	$ N/A

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☒ No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☒ No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I have been incarcerated since my original conviction in 1995. My attorney who was appointed at the state level will file my brief in opposition pro bono.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: January 19, 2001

Ulysses Sneed
(Signature)

No. 00-1002

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STATE OF ALABAMA,

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ULYSSES CHARLES SNEED,

Respondent.

On Petition For A Writ of Certiorari
To The Supreme Court of Alabama

RESPONDENT'S BRIEF IN OPPOSITION

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BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent Ulysses Charles Sneed respectfully requests that this Honorable Court deny the petition herein for a writ of certiorari for review of the judgment and opinion of the Alabama Supreme Court originally entered on June 30, 2000, and modified on September 15, 2000.

STATEMENT OF THE CASE

A. Course of Proceedings and Disposition Below

Ulysses Charles Sneed was charged with capital murder for the killing of the clerk of a convenience store, Clarence Terry. The indictment against Mr. Sneed alleged that he committed the capital offense of a murder during the course of a first degree robbery, in violation of ALA. CODE § 13A-5-40 (a) (2) (1975). Mr. Sneed was arraigned on January 6, 1994; he pled not guilty and not guilty by reason of insanity. *Voir dire* in this case began on October 16, 1995. On October 23, 1995, the jury was sworn and testimony in Mr. Sneed's trial began. Mr. Sneed was convicted on October 27, 1995. The jury recommended a sentence of death on October 30, 1995. On December 21, 1995, Mr. Sneed was sentenced to death by Judge Sherrie W. Brown of the Morgan County Circuit Court.

Mr. Sneed gave oral notice of appeal to the Circuit Court of Morgan County on December 21, 1995, and filed his notice of appeal at the Alabama Court of Criminal Appeals on December 27, 1995. Mr. Sneed filed a motion for new trial on January 4, 1996. The Circuit Court of Morgan County denied the motion for new trial on January

10, 1996. The Alabama Court of Criminal Appeals affirmed Mr. Sneed's conviction and sentence on April 30, 1999. The Supreme Court of Alabama reversed Mr. Sneed's conviction, issuing its original opinion on June 30, 2000, and then overruling the State's application for rehearing and issuing a modified opinion on September 15, 2000.

B. Statement of Facts

On August 29, 1993, Ulysses Sneed rode with Chris Hines from Louisville, Kentucky to Alabama to look for a job. While Mr. Sneed was staying with Mr. Hines and his friend, he met John Hardy. John Hardy was Mr. Hines' cousin; Mr. Sneed had never met Mr. Hardy before. He went with Mr. Hines and Mr. Hardy to the Ebony Club on Friday and Saturday nights of the next week. On Labor Day, Mr. Sneed and Mr. Hardy borrowed Mr. Hines's car to go buy some beer. They "got wasted" on the beer and liquor they had bought. While on their way back from the store, Mr. Hardy began discussing a fight that he got into at the Ebony Club that Friday. Mr. Hardy stated, "he shouldn't have let that guy take him."

Without any discussion, Mr. Hardy drove to his house and got a rifle. Later in the car, Mr. Hardy said, "Let's go get some money." Mr. Sneed thought Mr. Hardy meant that they would "strong arm" a convenience store, or in other words, demand money without deadly force. In the early morning hours of September 7, 1993, they pulled into Bud's Convenience Store. Mr. Hardy pulled off his shirt sleeves, and they tied them around their faces. As soon as Mr. Sneed opened the door to the convenience store, Mr. Hardy stepped in and began shooting the rifle. Mr. Sneed ran to get behind the counter. The store's clerk, Clarence Terry, was shot and killed. Mr. Sneed attempted to

open the cash register but could not. He carried the register out of the store. There was a surveillance camera in the convenience store videotaping the robbery and Mr. Terry's death.

The next day Mr. Hines, Mr. Hardy, and Mr. Sneed returned to where Mr. Hardy and Mr. Sneed left the cash register. They beat on the register until money came out. The three men returned to Louisville the next day. The Decatur police showed the videotape from the convenience store to other law enforcement officers who testified that they recognized Mr. Hardy in the tape. Mr. Sneed was arrested for this offense in Louisville. He gave a statement to the police and was returned to Alabama to stand trial.

ARGUMENT

The State of Alabama urges this Honorable Court to grant Certiorari in the case at bar to answer the question whether the redaction of a confession in accordance with *Richardson v. Marsh*, 481 U.S. 200 (1987), renders the confession involuntary in violation of the Fifth Amendment. As even a cursory review of the published opinion of the Supreme Court of Alabama reveals, however, this question is not presented by the instant case. On the contrary, the State's objection to the decision of the lower court is to the court's application of existing case precedent to the facts of the case at bar.

Over Mr. Sneed's objection, his trial was consolidated with that of his co-defendant, John Hardy. In an attempt to address the Confrontation Clause concerns expressed by this Honorable Court in *Bruton v. United States*, 391 U.S. 123 (1968), the

district attorney submitted to the jury a redacted version of Mr. Sneed's statement to the police which deleted all references to Mr. Hardy. Where Mr. Sneed said "we" or "he" in his statement, the State substituted "I." As Mr. Sneed argued at trial and on appeal, the replacement of "John and I" and "John" with "I" distorted Mr. Sneed's role in the events surrounding the crime. The redacted statement distorted the facts of the case and enlarged Mr. Sneed's role in the offense, effectively nullifying Mr. Sneed's defense that he lacked the specific intent to commit murder. Thus, the joinder of Mr. Sneed's trial with Mr. Hardy's, which necessitated the revision of Mr. Sneed's statement, unfairly prejudiced Mr. Sneed's ability to prove that he lacked the specific intent to kill. The detrimental effect of the redaction was compounded because Mr. Sneed was also forced to limit his cross-examination and could not fully present his defense that he was guilty only of felony-murder. Ulysses Sneed was thus denied "'a meaningful opportunity to present a complete defense.'" *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (quoting *California v. Trombetta*, 467 U.S. 479, 485 (1984)).

In *Richardson v. Marsh*, 481 U.S. 200 (1987), this Honorable Court permitted the practice of redacting a co-defendant's statement to eliminate references to another defendant. However, the redaction cannot be done without regard to prejudice that may arise. The New York Court of Appeals recognized this when analyzing a redacted statement in *People v. Mahboubian*, 543 N.E.2d 34 (N.Y. 1983). In that case, co-defendants Mr. Mahboubian and Mr. Sakhai were convicted of burglary, attempted grand larceny and conspiracy; they were alleged to have conspired to steal Mr. Mahboubian's Persian antiques to collect the insurance on them. Mr. Mahboubian

claimed complete innocence. Mr. Sakhai admitted to the theft but denied involvement in the insurance fraud. The court reviewed Mr. Mahboubian's claim that he was "unduly prejudiced at the joint trial, when, out of concern for a possible *Bruton* problem with respect to Sakhai, large portions of his statement to an Assistant District Attorney were redacted." *Mahboubian*, 543 N.E.2d at 40. The court held in Mr. Mahboubian's favor because the full statement was consistent with and supportive of his theory of the case, and "would have provided the jury with an explanation for some of the evidence equally consistent with an inference of innocence as of guilt." *Id.* at 41.

Mr. Sneed faced the same situation confronting the defendant in *Mahboubian*. The State redacted Mr. Sneed's statement to protect the rights of John Hardy, but in doing so, prejudiced Mr. Sneed. In the middle of trial, the State presented Mr. Sneed's attorneys with the redacted version of the statement. Mr. Sneed objected to the redacted statement. The State later submitted a second redacted statement, but the statement was not significantly changed from the first. Mr. Sneed's attorney stated, "Your Honor, we're going to object to this statement. It's incorrect. It continually refers to "I went, "I went," "I borrowed the car." Those are factually incorrect. The car was borrowed by the co-defendant." Mr. Sneed's counsel emphatically pointed out that Mr. Sneed's defense was severely prejudiced if it appeared from his own statement that he planned the robbery alone and was the only active participant in the robbery. This was especially true in light of Mr. Sneed's contention that he lacked the specific intent to commit capital murder.

The trial court acknowledged that the redacted statement mischaracterized the

events of the offense. As trial court observed:

> Some of the areas of the redacted statement, however, by using "I" tend to make it a little bit different, substantially different, than what the original statement stated. The redacted statement makes no reference to the shots, nor does it indicate whatever that Mr. Sneed takes the responsibility for the firing. If Mr. Sneed is not the one that took off the shirt and did the mask, that's wrong. That doesn't need to be in there. If that's not what the facts were, period, then to redact it to make any reference to Mr. Hardy in making that a false statement —.

The second redacted statement, however, contained the same references that the trial court identified as areas of concern in its initial impression of the redaction. Nevertheless, the trial court allowed the redacted statement to be admitted over the defense's objection.

The reliability of statements is a central concern of the Due Process Clause. *See Bram v. United States*, 168 U.S. 532, 547 (1897) (reliability of confessions is a concern because "The human mind . . . is liable . . . to acknowledge indiscriminately a falsehood or truth"). In many cases, this Honorable Court has found due process violations where confessions were of doubtful reliability. For example, in *Brown v. Mississippi*, 297 U.S. 278 (1936), this Honorable Court held that the Due Process Clause requires the exclusion of confessions obtained under circumstances which present risks that the statements are unreliable. This Honorable Court has emphasized concern for this risk in subsequent cases. *See, e.g., Lyons v. Oklahoma*, 322 U.S. 596 (1944); *Ward v. Texas*, 316 U.S. 547 (1942); *Chambers v. Florida*, 309 U.S. 227 (1940).

Introducing only a part of a statement prevents a "fair and impartial understanding" of the statement. *United States v. Marin*, 669 F.2d 73, 84-85 (2d Cir.

1982). It also "paint[s] a distorted picture" of the confession's meaning. *United States v. Walker*, 652 F.2d 708, 713 (7th Cir. 1981). Incomplete statements are inherently untrustworthy and thus violate the fundamental requirement of evidentiary reliability. Because incomplete statements are inherently unreliable, there is a longstanding requirement that statements be admitted in their entirety. "Confessions or declarations, whether offered in evidence in a civil or criminal case, must be received as a whole. The part which criminates must be taken connected with that which exculpates." *Eiland v. State*, 52 Ala. 322, 335 (1875). In *Levy v. State*, 49 Ala. 390 (Ala. 1873), the Alabama Supreme Court stated:

> The *whole* of a confession or admission must be given in evidence, and taken together; in other words, it must not be garbled. Apart from the *manifest injustice* to the party of selecting the parts of the confession or admission deemed prejudicial, and disconnecting them from other statements with which they were connected in expression, it would be impossible to fix the true meaning of the parts selected.

Id. at 393, 394 (emphasis added).

Alabama courts have long recognized this "rule of completeness." In *Chambers v. State*, 26 Ala. 59 (Ala. 1855), the Alabama Supreme Court stated, "[T]he general rule is, that the whole of what the prisoner said on the subject at the time of making the confession, should be taken together. This rule . . . is the dictate of reason, as well as humanity." *Id.* at 63 (citation omitted). Many cases since *Chambers* have articulated the rule of completeness. *See, e.g., Baker v. State*, 599 So. 2d 60, 62 (Ala.Cr.App. 1991) (discussing principle of "entirety of parts"); *Eiland*, 52 Ala. at 335 ("Confessions or

declarations, whether offered in evidence in a civil or criminal case, must be received as a whole."); *see also United States v. Smith*, 794 F.2d 1333, 1335 (8th Cir. 1986) (1986) ("Generally, when part of a defendant's post-arrest statement is introduced into evidence, the defendant has the right to have the entire statement introduced."); *United States v. Wenzel*, 311 F.2d 164, 168 (4th Cir. 1962) (stating rule of completeness); *United States v. Marin*, 669 F.2d 73 (2d. Cir 1982) (same).

In *Pointer v Texas*, 380 U.S. 400 (1965), this Honorable Court observed: "There are few subjects, perhaps, upon which this Court and other courts have been more nearly unanimous than in their expressions of belief that the right of confrontation and cross-examination is an essential and fundamental requirement for the kind of fair trial which is this country's constitutional goal." *Id.* at 405. In Alabama, the right to a thorough cross-examination is codified in ALA. CODE § 12-21-137 (1975): "The right of cross examination, thorough and sifting, belongs to every party as to the witnesses called against him." *See also* C. GAMBLE, MCELROY'S ALABAMA EVIDENCE, § 136.01 (4th ed. 1991).

In Mr. Sneed's case, his fundamental right to cross-examination, often called the "greatest legal engine ever invented for the discovery of truth," *e.g. Hooper v. State*, 585 So.2d 137, 141 (Ala. 1990) (Almon, J., dissenting), quoting 5 J. WIGMORE, A TREATISE ON THE SYSTEM OF EVIDENCE IN TRIALS AT COMMON LAW § 1367, at 29 (3d ed. 1940), was abridged by the redaction in his statement.

Because portions that related to Mr. Sneed's lessened culpability for this crime also implicated the co-defendant, the redaction limited what Mr. Sneed could explore in

his cross-examination of the law enforcement officers who took his statement. For example, his counsel was not permitted to ask police officers if they were told that another person shot the victim. Counsel was prohibited from asking a witness, "Who asked you if they could borrow your car?" because that question would have elicited a reference to the co-defendant. Counsel was barred from asking a witness if he had stated that someone else fired every shot. Counsel could not even ask detailed questions about the person who shot the victim. This improper limitation on Mr. Sneed's right to cross-examination further violated his rights under the Sixth Amendment and the Alabama Constitution. *See Davis v. Alaska*, 415 U.S. 308 (1974) (conviction reversed where defendant not permitted to cross-examine key prosecution witness about his prior adjudication of juvenile delinquency and his probation status at the time of trial); *Hampton v. State*, 681 So.2d 273 (Ala.Cr.App. 1996) (conviction reversed when defendant not permitted to cross-examine confidential informant about prior and pending criminal charges).

The redacted version of the statement made it appear that Mr. Sneed was primarily responsible for planning and executing the offense, when this was clearly not the case. Furthermore, the jury may have believed that Mr. Sneed lied in his statement when he said that he was the only person there. The trial court's decision to permit the redaction of Mr. Sneed's statement impeded his defense of lack of specific intent, denied him the opportunity to use the most exculpatory portions of his statement, blocked his ability to conduct a full cross-examination, led the jury to believe that Mr. Sneed was heavily involved in the planning of this offense, and may have created the

impression that he was lying to protect his co-defendant when he made the statement.

The Supreme Court of Alabama considered all of the foregoing factors in reaching its factual conclusion that Mr. Sneed's statement was edited and redacted to the point that it was unduly prejudicial to his defense and therefore should not have been admitted into evidence by the trial court. In reversing Mr. Sneed's conviction and sentence, the Supreme Court of Alabama did not decide an important question of federal law. Furthermore, the opinion issued by the Supreme Court of Alabama in no way conflicts with the relevant decisions of other state courts of last resort, the published opinions of the United States courts of appeals, or the jurisprudence of this Honorable Court. As such, none of the considerations identified in Rule 10 of the Rules of the Supreme Court of the United States are implicated by the instant case and this Honorable Court should therefore deny review.

CONCLUSION

For the foregoing reasons, the State's petition for certiorari is due to be denied.

Respectfully submitted,

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